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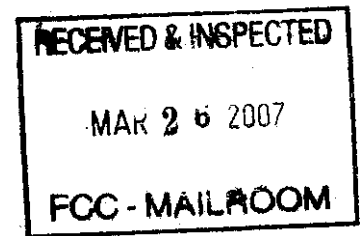
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March 23, 2007

REPLY TO PEQUOT LAKES OFFICE

Via **Overnight Service & Facsimile**

Ms. Marlene Dortch
 Federal Communications Commission
 Office of the Secretary
 445 12th Street, SW
 Washington, D.C. 20554



Re: CGB-CC-0616
 Reply in Support of Petition for Exemption from Closed Captioning
 Long Haul Productions, Inc.

Dear Ms. Dortch:

In response to the Opposition filed on March 2, 2007 by the Telecommunications for the Deaf and Hard of Hearing, Inc. ("**TDH**") National Association for the Deaf ("**WAD**") Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN"), Hearing Loss Association of America ("HLLA"), Association of Late-Deafened Adults, Inc. ("ALDA"), American Association of People with Disabilities ("AAPD"), and California Coalition of Agencies Serving the Deaf and Hard of Hearing ("CCASDHH") (collectively, "Commenters"), Long Haul Productions, Inc. submits this Reply In Support of its Petition for Exemption from Closed Captioning below:

INTRODUCTION

In late 2005, a new Minnesota company was formed, Long Haul Productions, Inc. (LHP). LHP is individually owned, and ~~was~~ formed in order to take over production and programming for the World Softball League's nationwide elite softball tournament events, and to handle the programming for Sled-Head 24/7™, a snowmobile enthusiasts show. Currently, LHP consists of its president/CEO, one full-time marketing employee, one full-time, and a 3/4 time employee to handle video programming. As it is still in the start-up phase of its business, and is relatively unfamiliar with the world of television or video programming, every additional expense threatens its long-term viability.

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On October 16, 2006, LHP filed its Petition for Exemption from Closed Captioning. Eventually, LHP wishes to provide closed captioning in its programming. However, **as** a start up company new to the television and video industry, it struggles to balance its financial condition with the costs, regulations and requirements that regulate television and video programming.

The Commenters assert that LHP's petition should be blankly denied due to LHP's failure to provide more complete and detailed evidence of the four statutory factors to determine whether the closed captioning requirements will impose an undue burden on the company. Specifically, the Commenters complain that LHP has failed to provide detailed financial records to ascertain the condition of its business so that the Federal Communications Commission (FCC) may consider the impact that a closed caption requirement would have on the operations of the company.

LHP disagrees with the Commenters' claims for **two** reasons. First, LHP **has** provided the FCC with sufficient information to understand the LHP's situation, size and general financial picture. While not provided in the most formal format, this information complies with the spirit of the regulations. In other words, it is sufficient for the FCC to determine the negative undue burden and impact that closed captioning will impose on LHP.

Second, LHP does **not** seek permanent exemption from closed captioning, but simply more time to establish itself, learn the industry, stabilize its financial condition, and seek sponsorship opportunities. Closed captioning will ultimately benefit LHP by helping it reach a larger audience. But forcing LHP to incorporate closed captioning before it is stable enough could lead to LHP's early demise, and defeat the purpose for 47 U.S.C. § 613(e) (hereinafter, "Section 713") in the first place.

- I. The FCC has sufficient financial information to determine that **LHP** will be unduly burdened if the FCC forces LHP to provide closed captioning right now.

The FCC has sufficient financial information to determine that LHP would be unduly burdened if the FCC forces LHP to provide closed captioning right now. Congress' goal in enacting 47 U.S.C. § 613(e) (hereinafter, "Section 713") is to complete the process of making closed captioned video programming available so that viewers with hearing disabilities are afforded the same opportunities to understand and enjoy **this** programming as others in the public. Congress recognized that for certain programming and programming owners the associated expense **of** adding closed captioning to the programs may be cost prohibitive.

Therefore, in an effort to balance providing closed captioning with the potential for burdening the small programming provider or owner, Section 713(d)(1) permits the **FCC** to exempt certain programs or classes of programs **from** closed captioning. Under **this** provision, the commission is "instructed to consider: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial

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resources of the provider or program owner; and (4) the **type** of operations of the provider or program owner."

That being said, the FCC intends for this petition process to be "sufficiently flexible to accommodate a wide variety of circumstances . . . [a process] that allows [the FCC] to consider any factors relevant to a petitioner's situation and provides parties significant leeway with respect to the information that can be submitted to demonstrate how the statutory factors . . . are **met**."² In addition, the regulations encourage the Petitioner to present any other factors that are relevant to the FCC's final determination, including any alternatives that might constitute a reasonable substitute for the closed captioning requirements.

LHP's petition provides that to add closed captioning costs would add another **\$825** to the production costs for each episode it produces amounting to a more than **7.5%** increase in cost. For a start up company generating roughly only \$12,000 in revenue, and an overall loss of **\$187,000**, adding an additional **\$10,750** in production costs would hurt LHP, and hinder its growth at this early stage of its existence.

The FCC itself recognizes the difficulties new businesses face. In fact, the regulations provide **new channel networks** an outright exemption for the first four (4) years of operation, **as well as** for those generating less than **\$3,000,000** in ~~annual~~ gross revenue, and thereafter provides a cap on providing closed captioning in excess of **2%** of gross revenues. However, and despite the fact that most closed captioning happens at the time of production, no similar exemptions for small **start up program producers or owners** are included in the regulations.

LHP's current small size and operations are incapable of handling its production schedule if it had to incorporate closed captioning into the production process. Unlike other programming, LHP's production schedule for its softball programming is dictated by the tournament schedule. Currently, only two in-house employees handle producing and editing all of the video footage and production. The turn around time between shooting the video footage of a tournament and producing a video program is only about five workdays. Adding closed captioning would require LHP to send the finished video program to a third entity **to** transcribe the audio and insert it into the video. This process would add one to two days and LHP would miss its broadcasting deadline. Video programming for SledHead 24/7TM would also need to be sent to an outside entity for closed captioning.

¹ *Implementation of Section 305 of the Telecommunications Act of 1996-Video Programming Accessibility, Report and Order*, 13 FCC Red 3272, 3342 (1997); 47 C.F.R. § 79.1(f).

² 13 FCC Red 3272 at 3362.

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In addition, given LHP's infancy relative to the television broadcasting world, networks have little incentive to absorb the closed captioning costs for such new and ~~unestablished~~ programs. Consequently, finding immediate sponsorship for these new costs is unfeasible.

Therefore, based upon the information provided in its petition along with the arguments and information provided above, the FCC has sufficient information to determine weigh LHP's situation, and should grant LHP's petition for exemption.

II. Alternatively, LHP Requests that the FCC Grant it a Partial Exemption.

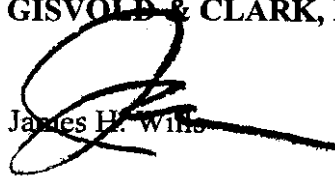
LHP does not seek permanent exemption from closed captioning, but simply more time to establish itself in the industry, forge relationships, stabilize its financial condition, and seek sponsorship opportunities.

Closed captioning will ultimately benefit LHP by helping it reach a larger audience. But forcing LHP to reach this audience through closed captioning before it establishes more stability could lead to its early demise, and defeat the purpose for Section 713 in the first place.

Therefore, in ~~an~~ effort to balance its business needs with Congress' ultimate goal of complete closed captioning, LHP respectfully requests that the **FCC** grant a partial exemption to LHP for at *least* a period of one (1) year from the date of its decision on LHP's petition?

Respectfully submitted,

KALINA, WILLS,
GISVOLD & CLARK, P.L.L.P.



JHW/jaj/mh

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³ See e.g. *In the matter of: The Wild Outdoors* Petition for Waiver of Closed Captioning Requirements, 16 F.C.C. R. 13611, 13614 (the size of operations and limited staff, and impact of additional costs ~~was~~ sufficient to grant petitioner a partial exemption for one (1) year.)

CERTIFICATE OF SERVICE

I, **Mary** Hartin, do hereby certify that, on March 23, 2007, a copy of the foregoing Reply in Support of Petition for Exemption from Closed Captioning **by** Long Haul Productions, Inc. in CGB-CC-0616, **was** served by first class U.S. mail, postage prepaid, upon **the** following:

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Mary Hartin'